CF0000063393

(3)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP)

CRIMINAL APPEAL NO. 392 /2000.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

APPELLANT : Sukalu son of Dasharu Mahara aged about 50 years, cultivator, resident of village Parapa, police station-Frejarpur, Dist. Bastar.

In Jail

Advocate

Rh. A.R.

- Versus -

RESPONDENT : State of Madhya Pradesh

Conviction	Sentence
U/s 307 I.P.C.	10 years R.I. and fine Rs.5,000/- in default 1 year R.I.

(11)

Criminal Appeal No.392/2000

Sukalu

vs.

State of M.P.(C.G.)

Judgment

Post for : 25-8-2001.

Sd/-
R.S. Garg
Judge

24-8-2001.

Marhare
GA 24.8

(12)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.392/2000

Sukalu

vs.

State of M.P. (C.G.)

JUDGMENT

Per Hon.R.S.Garg,J :

The appellant being aggrieved by the judgment dated 27-1-2000 passed in Sessions Trial No.10/99 by the learned Third Addl.Sessions Judge, Bastar (Jagdalpur) convicting the appellant under Section 307 IPC and sentencing him to undergo R.I. for ten years and pay fine of Rs.5000/-, in default of payment of fine, to undergo further R.I. for one year, has filed this appeal.

2. The prosecution case in brief is that the complainant P.W.3 Mangalram had kept the daughter of the accused as his wife, the accused called the complainant Mangalram to his house and asked him to pay money as the complainant had kept his daughter. The complainant informed the accused that he wasnot possessed of the money but he assured him that he would pay the money to him after some time. The accused being enraged by the said refusal made an assault on the victim by means of a tangia (axe). He caused injury on the hand of the victim and caused yet another injury on the chest. The complainant after suffering the injuries went to his house, fell unconscious and lodged the report on the next morning. After registration of the report, the complainant was sent to the hospital for his medical examination and repair of the injuries. Various panchnamas

were prepared, the statements of the witnesses were recorded and after completing the investigation the prosecution agency filed the challan against the accused. The accused was put to trial, as he denied commission of the offence.

3. The prosecution in support of its case examined as many as five witnesses but the accused though said that he wanted to lead defence evidence did not lead any evidence. After hearing the parties, learned court below convicted and sentenced the appellant as referred to above.

4. Shri Rajesh Jain, learned counsel for the appellant, submits that from the statements of the witnesses it would clearly appear that the appellant has been falsely implicated. Referring to the statements of the witnesses, he submits that the appellant had no intention to make an attempt on the life of the victim, therefore, his conviction under Section 307 IPC is bad. He lastly submitted that the trial court was unjustified in awarding such a harsh sentence, to the accused, who is aged about 50-55 years.

5. Learned counsel for the State, Shri Ranveer Singh, on the other hand submitted that from the statements of P.W.3 Mangalram, it would clearly appear that the accused opened an assault on him and caused him two injuries. He further submits that the size of the injury would clearly show the intention of the accused. He submits that award of sentence does not suffer with the vice of excessiveness.

5. I have heard the parties at length and have perused the records.

6. P.W.3 Mangalram is the victim. He had clearly stated

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that he was invited by the accused, the ~~accused~~ accused required him to pay some money, on which he assured the accused that he would pay him some money. While he was going towards his house the accused assaulted him by means of an axe. He suffered first injury near his left elbow and suffered yet another attack on his chest. The Court while recording the statements of the witnesses had observed that marks of the injuries could be seen. In paragraph 3, he stated that after he reached his house, he suffered with giddiness and slept. Thereafter, he lodged the report in the next morning. He further stated that his injuries were examined by the doctors and his blood-stained shirt was seized by the police. In the cross-examination, it was suggested to him that in a scuffle he fell on the ground and suffered injuries. It was suggested to him that as the accused did not give him any money, he was falsely implicating the accused. In paragraph 7, he further stated that after suffering the injuries, he suffered giddiness and thereafter he was taken to the hospital by his brother Kanwal. In his cross-examination, nothing important could be brought out to show that he was telling lies. True it is that P.W.2 Mangalram Kashyap and P.W.4 Dhan Singh have not supported the prosecution case but the said P.W.3 Mangalram, the victim, appears to be a witness of truth.

7. P.W.1 Dr.K.Vinay Kumar had examined the victim. He had found one injury on the left hand admeasuing 5 cm. x 3 cm. muscle deep. He also found another injury on the left chest obliquely placed admeasuring 7½ cm. x 1½ cm. skin deep. Both the injuries were caused by a hard and sharp object. According to the said doctor, he had examined the shirt of the victim and he had marked the stains by a pencil. In the cross-examination, he refuted

the suggestions of the defence that the injuries could be caused by a fall.

8. P.W.5 ~~Bhanwar Singh~~ D.S. Dehari had investigated into the matter. He had certified the first information report, the spot map, seizure of the plain and stained earth, seizure of the shirt and had further certified that he had sent the seized articles for their analytical report. Nothing substantial was put to him in the cross-examination.

9. From the statements of P.W.3 Mangalram, it would clearly appear that it was the accused who made an attempt by means of an axe and caused him two injuries.

10. The submission of the learned counsel for the appellant that as the injuries were simple in nature, the appellant could not be convicted under Section 307 IPC, cannot be accepted. It is not the nature of the injuries which is decisive but it is the intention of the accused with which he makes an assault on the victim. Present is not a case where after causing first injury the accused stopped, present is a case where after causing the injury on the left hand the appellant yet caused another injury on the chest. The injury was not caused by ordinary object but was caused by an axe. The length and width of the injury would clearly show that ~~it~~ had the injury gone some little deeper, it could lead ~~had~~ to the death of the victim.

11. After going through the entire evidence, I am unable to hold that the court below was unjustified in convicting the appellant under Section 307 IPC.

12. So far as the question of sentence is concerned, in the opinion of this Court, the court below was

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unjustified in awarding ten years sentence and imposing fine of Rs.5000/-. It appears that the accused was demanding money because the complainant had kept his daughter as the wife. True it is that the accused had no reason to get enraged but the fact remains that non-payment of the money was the genesis of the occurrence.

13. Taking into consideration the nature of the injury, the genesis of the occurrence and the age of the accused, I consider present to be afit case where the sentence should be reduced. While maintaining the conviction of the appellant, I direct that he shall undergo R.I. for four years and pay fine of Rs.3000/-, in default of payment of fine he shall undergo R.I. for seven months. If the amount of fine is recovered from the accused, the entire amount shall be paid to the victim after due verification.

14. The appeal to the extent indicated above is allowed.

Sd/-
R.S. Garg
Judge

25-8-2001.

H/-
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